

## **RULE E**

### **ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS**

#### **(a) Itemized Demand for Judgment**

The demand for judgment in every complaint filed under Supplemental Rules B or C shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under Supplemental Rule E(5)(a) may be based upon these allegations.

#### **(b) Salvage Action Complaints**

In an action for a salvage reward, the complaint shall allege the dollar value of the vessel, cargo, freight, and other property salvaged, and the dollar amount of the reward claimed.

#### **(c) Verification of Pleadings**

Every complaint in actions governed by Supplemental Rules B, C, or D shall be verified upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall: state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and, state that the affiant is authorized so to verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by affidavit or as otherwise ordered.

**(d) Review by Judicial Officer**

Unless otherwise required by the judicial officer, the review of complaints and papers called for by Supplemental Rules B(1) and C(3) does not require the affiant party or attorney to be present. The applicant for review shall include a form of order to the clerk which, upon signature by the judicial officer, will direct the arrest, attachment or garnishment sought by the applicant. In exigent circumstances, the certification of the plaintiff or his attorney under Supplemental Rules B and C shall consist of an affidavit.

**(e) Instructions to the Marshal**

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal.

**(f) Property in Possession of United States Officer**

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer or employee or custodian to retain custody of the property until ordered to do otherwise by a judicial officer.

**(g) Security for Costs**

In an action under the Supplemental Rules, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to Supplemental Rule E(2)(b). Unless otherwise ordered, the amount of security shall be \$500. The party so ordered shall post the security by surety or otherwise within five days after the order is entered. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

**(h) Adversary Hearing**

The adversary hearing following arrest or attachment or garnishment that is called for in Supplemental Rule E(4)(f) shall be conducted by a judicial officer within three (3) court days, unless otherwise ordered.

**(i) Appraisal**

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judicial officer will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee normally will be paid by the moving party, but it is a taxable cost of the action.

**(j) Security Deposit for Seizure of Vessels**

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit \$5,000 with the marshal to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance, and insurance. The marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in Supplemental Rule E. In addition, the party shall satisfy any additional insurance or deposit requirement promulgated by the United States Marshals Service in their regulations or manuals that relate to seizure of vessels.

**(k) Intervenor's Claims**

- (1) Presentation of Claim. When a vessel or other property has been arrested, attached, or garnished, and is in the hands of the marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judicial officer. Upon the satisfaction of the requirements of Fed. R. Civ. P. 24, the clerk shall forthwith deliver a

conformed copy of the complaint to the marshal, who shall deliver the copy to the vessel or custodian of the property. Intervenor shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached, or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal for seizure of a vessel as required by L.Adm.R. E(l l).

- (2) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party plaintiff permits vacation of an arrest, attachment, or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

## **(l) Custody of Property**

- (1) Safekeeping of Property. When a vessel or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the Court.
- (2) Insurance. The marshal may order insurance to protect the marshal, his deputies, keepers, and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo, or other property, and in performing whatever services may be undertaken to protect the vessel, cargo, or other property, and to maintain the Court's custody. The party who applies for arrest or attachment of the vessel, cargo, or other property shall reimburse the marshal for premiums paid for the insurance and shall be an added insured on the policy. The party who applies for removal of the vessel, cargo, or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo, or other property is in custody of the Court.

- (3) Cargo Handling, Repairs, and Movement of the Vessel. Following arrest or attachment of a vessel, no cargo handling, repairs, or movement of the vessel may be made without an order of Court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his liability, the Court may direct the marshal to permit cargo handling, repairs, movement of the vessel, or other operations. Before or after the marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo, or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judicial officer will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.
- (4) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo, or other property in custody of the Court who has not been paid and claims the right to payment as an expense of administration shall submit an invoice to the clerk in the form of a verified claim at any time before the vessel, cargo, or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The Court may consider the claims individually or schedule a single hearing for all claims.

**(m) Sale of Property**

- (1) Notice. Unless otherwise ordered upon good cause shown or as provided by law, notice of sale of property in an action *in rem* shall be published as provided in L.Adm.R. G(5) at least three (3) times during the period of time consisting of ten (10) days prior to the day of the sale.
- (2) Payment of Bid. These provisions apply unless otherwise ordered in the order of sale:
- (A) The person whose bid is accepted shall immediately pay the marshal the full purchase price if the bid is \$1,000 or less.

- (B) If the bid exceeds \$1,000, the bidder shall immediately pay a deposit of at least \$1,000 or 10% of the bid, whichever is greater, and shall pay the balance within three (3) days after the day on which the bid was accepted. If an objection to the sale is filed within that three-day period, the bidder is excused from paying the balance of the purchase price until three court days after the sale is confirmed.
  - (C) Payment shall be made in cash, by certified check, or by cashier's check.
- (3) Late Payment. If the successful bidder does not pay the balance of the purchase price when it falls due, the bidder shall pay the marshal the cost of keeping the property from the due date until the balance is paid, and the marshal may refuse to release the property until this charge is paid.
- (4) Default. If the successful bidder does not pay the balance of the purchase price within the time allowed, the bidder is deemed to be in default. In such a case, the judicial officer may accept the second highest bid or arrange a new sale. The defaulting bidder's deposit shall be forfeited and applied to any additional costs incurred by the marshal because of the default, the balance being retained in the registry of the Court awaiting its order.
- (5) Report of Sale by Marshal. At the conclusion of the sale, the marshal shall forthwith file a written report with the Court of the fact of sale, the date, the price obtained, the name and address of the successful bidder, and any other pertinent information.
- (6) Time and Procedure for Objection to Sale. An interested person may object to the sale by filing a written objection with the clerk within three (3) days following the sale, serving the objection on all parties of record, the successful bidder, and the marshal, and depositing a sum with the marshal that is sufficient to pay the expense of keeping the property for at least seven (7) days. Payment to the marshal shall be in cash, certified check, or cashier's check.

- (7) Confirmation of Sale. A sale shall be confirmed by order of the Court within five court days but no sooner than three court days after the sale unless an objection to the sale has been filed, in which case the Court shall hold a hearing on the confirmation of the sale. The marshal shall transfer title to the purchaser upon the order of the Court.
- (8) Disposition of Deposits.
- (A) Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.
- (B) Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.
- (9) Title to Property. Failure of a party to give the required notice of the action and arrest of the vessel, cargo, or other property or required notice of the sale, may afford ground for objecting to the sale but does not affect the title of a *bona fide* purchase of the property without notice of the failure.